

May Department Stores Company, Venture Stores Division and United Retail Workers Union Local No. 881, Chartered by United Food and Commercial Workers International Union, AFL-CIO, CLC. Cases 13-CA-21660 and 13-CA-21696

17 February 1984

DECISION AND ORDER

BY CHAIRMAN DOTSON AND MEMBERS
HUNTER AND DENNIS

Upon charges and an amended charge filed by United Retail Workers Union, Local No. 881, chartered by United Food and Commercial Workers International Union, AFL-CIO, CLC, herein called the Union, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 13, issued an order consolidating cases, and a consolidated complaint and notice of hearing on 18 December 1981, against May Department Stores Company, Venture Stores Division, herein called the Respondent. The complaint alleges that the Respondent has engaged in and is engaging in certain unfair labor practices affecting commerce within the meaning of Sections 8(a)(5) and (1) and 2(6) and (7) of the National Labor Relations Act, as amended. Copies of the charges and the consolidated complaint and notice of hearing were duly served on the parties. The Respondent filed an answer to the complaint, denying that it had committed any unfair labor practices.

Thereafter, the Respondent, the Union, and counsel for the General Counsel entered into a stipulation of facts and jointly petitioned the Board to transfer this proceeding directly to the Board for findings of fact, conclusions of law, and a decision and order. The parties stipulated that they waived a hearing before an administrative law judge, the making of findings of fact and conclusions of law by an administrative law judge, and the issuance of an administrative law judge's decision. The parties also agreed that no oral testimony was necessary or desired by any of the parties, and that the charges, the complaint, the answer, and the stipulation of facts, including attached exhibits, constituted the entire record in the case. The parties, however, reserved the right to object to the materiality, relevancy, or competence of any of the stipulated facts.

On 23 April 1982 the Board issued its order approving the stipulation and transferring the proceeding to the Board. Thereafter, the General

Counsel, the Respondent, and the Union filed briefs which have been duly considered by the Board.¹

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the entire record herein as well as the briefs filed by the parties, and makes the following

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

May Department Stores Company, Venture Stores Division, is a Delaware corporation engaged in the retail sale and distribution of general merchandise at various store locations in the States of Illinois and Indiana, with its offices and principal place of business located at St. Ann, Missouri. During the 1981 calendar year, a representative period, the Respondent, in the course and conduct of its business, derived gross revenues in excess of \$500,000 and received in excess of \$50,000 from retail sales within the States of Illinois and Indiana, of general merchandise, which it purchased and caused to be transported to the States of Illinois and Indiana directly from points located outside those States.

The Respondent admits, and we find, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. THE LABOR ORGANIZATIONS INVOLVED

United Retail Workers Union and United Food and Commercial Workers International Union, AFL-CIO, CLC, are labor organizations within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. Introduction

In 1978, the Respondent recognized United Retail Workers Union (URW) as the collective-bargaining representative of its employees in the following units:

- (a) All employees employed in Respondent's operations at the following locations: 1) 9449 Skokie Boulevard, Skokie, Illinois; 2) 116 South Waukegan, Deerfield, Illinois; 3) 444 East Rand Road, Arlington Heights, Illinois; 4) 521 East North Avenue, Glendale Heights, Illinois; 5) 125 West 87th Street, Chicago, Illi-

¹ The Respondent filed a "Motion To Supplement the Record," the General Counsel filed a motion in opposition to the Respondent's motion, and the Respondent filed a reply to the General Counsel's opposition. In view of our disposition herein, we deny these motions, as this additional evidence would have no effect on the outcome of this proceeding.

nois; 6) 11440 South Halsted Street, Chicago, Illinois; 7) 7601 South Cicero Avenue, Chicago, Illinois; 8) 6063 Broadway, Merrillville, Indiana; 9) 1311 Golf Road, Schaumburg, Illinois; and 10) 1740 North Kostner, Chicago, Illinois, but excluding all managers and other employees defined as supervisors, trainees (to a maximum of six per store) and department managers, office clerical employees, security personnel (including guards and watchmen), professional employees and craftsmen performing work in said stores, but who are not part of the facility's normal employee complement. [Hereinafter the Chicago stores.]

(b) All employees employed in Respondent's operations located at 2800 North Water Street, Decatur, Illinois, but excluding all managers and other employees defined as supervisors, trainees (to a maximum of six per store) and department managers, office clerical employees, security personnel (including guards and watchmen), professional employees and craftsmen performing work in said store, but who are not part of the facility's normal employee complement. [Hereinafter the Decatur store.]

The Respondent and the URW entered into their initial collective-bargaining agreement for the Chicago stores in June 1978, and for the Decatur store in July 1978. The most recent collective-bargaining agreement for the Chicago stores is effective by its terms from 21 July 1980 through 24 July 1983. The most recent collective-bargaining agreement for the Decatur store is effective by its terms from 1 January 1981 through 31 December 1983. The Respondent terminated both agreements effective 1 November 1981.

B. The Union Affiliation Election

In June 1981, the presidents of URW's four locals unanimously agreed to seek affiliation with United Food and Commercial Workers International Union, AFL-CIO, CLC (UFCW). During July 1981, URW held meetings for the membership of its local unions regarding the proposed affiliation. Each meeting was open to all URW members.²

The following individuals were eligible to vote in the affiliation election:

(a) All active URW members on the payroll of an employer under contract with URW as of the last payroll date prior to 31 July 1981; and

(b) Nonmembers employed by an employer under contract with URW as of the last payroll date prior to 31 July 1981: (1) who had not com-

pleted but would complete their 30-day probationary period before 31 July and (2) from whom URW had received a membership application before 31 July 1981.

On or about 31 July 1981 Walenze Direct Mail, on behalf of URW, mailed instructions and ballots for a mail ballot referendum on the affiliation to 20,548 individuals fitting the eligibility requirements. Of this number, 9,235 ballots were timely returned and tabulated. The results showed that 6,823 votes were cast for, and 2,344 against, affiliation. There were 68 invalid votes.³

On or about 21 August 1981 officials of URW informed Respondent of the results of the mail ballot referendum. In subsequent correspondence Respondent agreed to honor its bargaining agreements with URW until 1 November 1981, the date UFCW granted a charter to URW as its Local No. 881.

C. The Respondent's Refusal to Bargain

Since on or about 1 November 1981 the Respondent has:

(a) Refused to recognize and bargain with Local No. 881 as the exclusive collective-bargaining representative for the employees of its Chicago and Decatur stores.

(b) Refused to process grievances with Local No. 881 arising on or after 1 November 1981 in accordance with article IX of the current collective-bargaining agreements.

(c) Refused to grant Local No. 881 representatives access to its stores for purposes of administering the collective-bargaining agreements in accordance with section 8.5 of the current collective-bargaining agreements.

(d) Refused to transmit to Local No. 881 union dues and initiation fees as called for by section 8.2 of the current collective-bargaining agreements.

(e) Refused to enforce the union membership requirement relative to Local No. 881 as set forth in section 8.1 of the current collective-bargaining agreements.

(f) Refused to submit the names and addresses of new hires in accordance with section 8.1(D) of the current collective-bargaining agreements.

CONCLUSIONS OF LAW

We find merit in Respondent's contentions that the election herein was conducted with insufficient due process safeguards. As announced in *Amoco*

² As of 31 October 1981, the 4 locals of URW represented approximately 22,400 employees, of whom approximately 20,500 were URW members.

³ The Respondent has approximately 1,292 unit employees, 1,214 of whom were eligible to vote. Of the ballots sent to Respondent's employees, 389 were returned and tabulated. No determination of how these ballots from employees in either of the two units herein were cast is available.

Production Co., 262 NLRB 1240 (1982), a critical element of an affiliation election is that all unit employees, whether union members or not, be permitted to participate and vote in the affiliation election. Because, in this case, all unit employees have not been accorded these rights, we find that the affiliation was improper. The Respondent, therefore, did not violate Section 8(a)(5) and (1) of the Act when it refused to bargain with United Retail Workers Union Local No. 881, chartered by

United Food and Commercial Workers Union, AFL-CIO, CLC, and refused to comply with the provisions of the collective-bargaining agreements noted herein in effect with United Retail Workers Union, as they would apply to Local No. 881.

ORDER

The National Labor Relations Board orders the consolidated complaint dismissed.